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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/633,784      | 08/04/2003  | Dirk Vorsteher       | 1003-0055           | 6881             |

7590 06/21/2005  
Joel H. Bock  
Cook, Alex, McFarron, Manzo,  
Cummings & Mehler, Ltd.  
200 West Adams Street, Suite 2850  
Chicago, IL 60606

EXAMINER

DEUBLE, MARK A

ART UNIT PAPER NUMBER

3651

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                  |  |
|------------------------------|-------------------------------|----------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/633,784 | Applicant(s)<br>VORSTEHER ET AL. |  |
|                              | Examiner<br>Mark A. Deuble    | Art Unit<br>3651                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-6,8-15 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,8-15 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4-15, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 5-6 of independent claim 1 state “as well as on end faces cast accepting elements for means of joining conveyor pans, and with a conveyor ban base” which renders the scope of the claim impossible to ascertain because it is unclear what the phrases “as well as” refers to. It appears to be superfluous language that only confuses the meaning of the claim. Appropriate correction is required.

Claim 11 states that “the side and top profiles are integral components of a rolled profile with a T-shaped cross section,” but claim 8 from which claim 11 depends states that the side and top profiles are exchangeably welded onto the side parts in the regions of the top run against which scraper ends are guided.” The side and top profiles can’t be both integral components and exchangeably welded components. The incompatibility of claim 11 and claim 8 from which it depends renders the scope of the claims impossible to ascertain.

Claim 12 states that “the pockets end flush with an upper end section of the vertical arm and stiffen the side parts over their entire height.” However, it appears from the Figures, that the pockets are formed in the middle section of the vertical arm rather than the upper end section.

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Furthermore, it is not understood how the pockets act to stiffen the side parts over their entire height. These inconsistencies render the scope of the claim impossible to ascertain.

Claim 19 depends from cancelled claim 2 which renders the scope of the claim impossible to ascertain. Furthermore, if claim 19 were amended to depend from claim 1, it would be a duplicate of claim 4. Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 5-6, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bandy, Jr. et al. (U.S. Patent No. 5,131,724).

Bandy, Jr. et al. shows a conveyor pan for underground face or gate conveyors that has a pair of cast side parts 13 and 14 each of which includes vertical arms 25/26 extending over a height of the bottom and top runs of the conveyor. At the bottom side of the vertical arm, a lower case flange arm extends outwards to the rear and a foot flange extends inwards to a base plate 25 that is welded to the bottom of the foot flange to close the bottom run of the conveyor. Accepting elements formed by open edged cast pocket slots 21 are formed in the vertical arms of the pans to engage tongue shaped segments 20 on the long sides of the conveyor pan base 11. The tongue shaped segments are welded to the outer sides of the side parts at 21 and 22. At the top of the side parts, the cast vertical arms have an integral end section with a generally T-shaped cross section that could be used as a machine track for an extraction machine with the upper side

of the T forming a cross web of the machine track. At the outer sides of the side parts, cast vertical ribs are formed between the pockets and the ends of the pan in the toggle accepting slots (see Figs. 1 and 2). Thus Bandy Jr. et al. shows all the structure required by claims 1, 5-6, and 12-14.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 8-10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of Bandy Jr. (U.S. 6,401,912).

Bandy Jr. et al. shows generally all the structure required by the claims, however, it does not disclose how the conveyor base is formed. Bandy Jr. '912 teaches that the conveyor base 26 can advantageously be fabricated of mild rollers steel to reduce the cost of the conveyor. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the conveyor base 11 of Bandy Jr. et al. of rolled steel to reduce the cost of the conveyor as taught by Bandy, Jr. '912. When this is done, the resulting conveyor pan would have all the structure required by claims 4 and 19.

In regard to the limitations of claims 8-10 that the side and top profiles are separate elements exchangeably welded onto the side parts, it should be noted making parts integral or separable has held to be obvious design choice. See *In re Larson*, 340 F.2d 965, 144 USPQ 347, 349 (CCPA 1965) (A claim to a fluid transporting vehicle was rejected as obvious over a prior

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art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured together as a single unit. The court affirmed the rejection holding, among other reasons, "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice."); and *In re Dulberg*, 289 F.2d 522, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.").

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of Gehle et al. (U.S. 4,373,757), Merten et al. (U.S. patent No. 5,601,341), or Fischer et al. (U.S. Patent No. 5,938,000).

Bandy Jr. et al. shows generally all the structure required by claim 15 except for the cast vertical ribs provided with cut-outs onto which lifting eyes or similar are fastened. However, Gehle et al., Merten et al., and Fischer et al. all teach that vertical ribs having cut outs forming lifting eyes may advantageously be added to the sides of a conveyor pan to strengthen the pan and to facilitate handling of the pan. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the conveyor pan of Bandy, Jr. et al. with such vertical ribs.

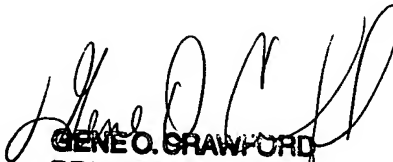
*Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md

  
**GENE O. CRAWFORD**  
**PRIMARY EXAMINER**